IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5929 of 1993
with
SPECIAL CIVIL APPLICATION No. 6057 of 1993
&
SPECIAL CIVIL APPLICATION No. 10153 of 1994

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

S.K.RANA & Ors.

Versus

STATE OF GUJARAT & Anr.

Appearance:
MR JD AJMERA for Petitioners
MR MITAL PANCHAL AGP for Respondents

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 07/12/2004

ORAL JUDGEMENT

Heard the learned advocates.

The petitioners, then an Agricultural Supervisor and Agricultural Assistants under the Director of Agriculture, Government of Gujarat challenge the order of punishment dated 15th April, 1993 made by the State Government. By impugned order, the petitioners and three others have been visited with punishment of reduction in pay at the minimum in the timescale with permanent effect.

By memorandum of charge dated 6th December, 1988, a joint disciplinary proceeding came to be initiated against the petitioners and others. The delinquents, an Agricultural Supervisor and the Agricultural Assistants were alleged to have committed offence of preparing false record and of committing financial irregularity in connivance with one another. After holding due inquiry, the said charges were held to be proved. For the guilt proved against the delinquents including the petitioners, they were visited with the punishment as aforesaid.

Learned advocate Mr. Ajmera has submitted that the initiation of disciplinary proceeding and the order of punishment are vitiated on the grounds of delay. He has submitted that the irregularities were alleged to have been committed in the year 1981-82 for which the disciplinary proceeding was initiated as late as in the month of December, 1988 and the punishment was imposed in the month of April, 1993. The gross delay in initiating the disciplinary proceeding and in completing the same shall vitiate the proceeding and the order of punishment. He has next submitted that the inquiry proceeding is vitiated for contravention of the principle of natural justice. He has submitted that the Officer entrusted with the preliminary inquiry made random checking and held the delinquents responsible for the alleged irregularities. The said Officer did not prepare panchnama of the checking done by him. He has next submitted that the Agricultural Supervisor - one Shri H.B Gedia was in the office upto the month of April, 1981. Some of the works in questions were completed while he was in office. If any irregularity were committed, the said Shri Gedia would equally be responsible. However, no action was taken against the said Shri Gedia. Whereas, other delinquents have been tried and punished. The petitioners have thus been meted discriminatory treatment. The order of punishment is, therefore,

vitiated on the ground of equality also.

In the year 1981, as part of the soil conservation project, the State Government had approved a project for construction of retention walls to prevent soil erosion due to rain and wind. The delinquents, then incharge of villages in Surendranagar and Limbdi Sub-Divisions, completed the construction of as many as 38 retention walls in some twenty seven villages within a short span of six months and spent a sum of Rs. 19,00,000/=, as per the approved budget. Some complaints were received with respect to the said retention walls i.e. either they were not constructed at all or they were not constructed as per the specifications. It was also alleged that the delinquents had split the works done by them so as to bring each piece of work within pecuniary limit of Rs. 10,000/=, which the delinquents were empowered to spend.

A preliminary inquiry, therefore, was held with respect to the said retention walls alleged to have been constructed in 27 villages. The delinquents did not deny that the works of constructing the retention walls were split into several parts with a view to bringing each transaction within the jurisdiction of the concerned delinquent. On the contrary, the delinquents tried to justify their action in splitting the construction works. After preliminary inquiry, the Officer reported that as against 9.81 cubic meters' cross section of retention walls, actually 1.81 cubic meters' cross section of such walls were constructed. The delinquents, therefore, were alleged to have made false entries in the official record and to have misappropriated the Government funds. Apportionment of the liability amongst the delinquents was made proportionate to their responsibility.

The chargesheet was replied to by the delinquents. The petitioner in Special Civil Application No. 5929 of 1993, an Agricultural Supervisor, took a defence that on 21st April, 1981, he was transferred from Bhuj to Surendranagar. He took charge from one Shri Gedia. According to him, some of the retention walls were constructed while Mr. Gedia was incharge at Surendranagar. According to the said petitioner, Mr.Gedia was equally responsible. As no disciplinary proceeding was initiated against the said Shri Gedia, the said petitioner ought not to have been charged for the alleged irregularities. He also stated that the alleged irregularities amounted to an offence punishable under Sections 409, 420, 465, 467, 468, 471, 477 IPC, and therefore also, no disciplinary inquiry should have been

initiated with respect to the said irregularities. He also took exception as to the delay and the manner in which preliminary inquiry was conducted i.e. the Officer concerned had not performed the checking of all retention walls completely but had done some random checking. That such random checking was not made in presence of the concerned delinquent and no panchnama of such random checking was made. During the disciplinary proceeding, the said Officer Shri Kapoor was extensively cross examined by each delinquent.

As recorded hereinabove, the charge of splitting the construction works so as to fit in the pecuniary jurisdiction of each delinquent has been proved by implied admission. Such financial irregularity cannot be justified in any manner. Besides, the justification given by the delinquents has not been accepted by the disciplinary authority. Mr. Ajmera has vehemently argued that the gross irregularity was committed in holding preliminary inquiry in as much as Shri Kapoor, the officer concerned made random checking and did not check each retention wall completely. It is true that the aforesaid Shri Kapoor did admit that the checking was done at random ie. only parts of the retention walls were examined and the officer concerned did not visit some villages at all. It should be noted here that there was no denial that the retention walls which were actually examined did not measure according to the official record nor did any delinquent ask for rechecking in his presence. Thus, the malpractice committed in construction of retention walls was tacitly admitted by each delinquent. The question of rechecking of each such wall in entirety and the actual difference in each wall would be relevant, if the delinquent were asked to refund the loss suffered by the State. In the present case, no order of recovery of such amount has been made. Hence, the issue is of no consequence.

As recorded in the chargesheet, as against 9.73 cubic meters of cross-section, only 1.81 cubic meters of cross section was constructed. After giving benefit of loss due to natural causes, it was calculated to 2.34 cubic meters. Still, the works completed came to 20% of what was shown in the official records. It should also be noted that the disciplinary inquiry was based on official records. The preliminary inquiry was held within two years of the alleged construction. Thus, mere delay in initiating the disciplinary proceeding or in completing the disciplinary proceeding would not prejudice the defence of the delinquents. Such delay would not vitiate disciplinary proceeding or the order of

punishment.

There is no dispute that one Shri Gedia, an Agricultural Supervisor was in the office upto the month of April, 1981. The petitioner Shri S.K Rana took over the charge from him in the month of April, 1981. Admittedly, no disciplinary proceeding has been initiated against the said Shri Gedia. Not even a preliminary inquiry was held to determine his involvement, if any. However, that alone should not be enough to exonerate the petitioners. Once the imputation of charge has been proved against a delinquent, suitable punishment is required to be imposed upon such delinquent. The principle of equality cannot be invoked in such matters.

As recorded hereinabove, the petitioners were found guilty of falsifying the records and of misappropriating the Government funds. The said charges have been proved against the petitioners and other delinquents. For such grave misconduct, the punishment of reduction in pay with permanent effect shall not be excessive which would call for interference. In my view, the punishment imposed upon the petitioners cannot be said to be disproportionate to the guilt proved.

No other contention is raised before me.

The petitions are dismissed with costs. Rule nisi issued in each petition is discharged.

The registry shall maintain copy of this judgment in each petition.

[Miss R.M Doshit, J.]

Prakash*